

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

_____)	
ALLEN R. SMITH and SARAH J.)	
SMITH, his wife,)	
)	
Plaintiffs,)	C.A. No.: 01C-12-105 RRC
)	
v.)	NON-ARBITRATION CASE
)	
JAMES A. LAWSON, IV, and)	TRIAL BY JURY OF
LINDA TYNDALL,)	TWELVE
)	
Defendants,)	
)	
and)	
)	
JAMES A. LAWSON, IV,)	
)	
Defendant/)	
Third-Party)	
Plaintiff)	
)	
v.)	
)	
ALLSTATE INSURANCE)	
COMPANY, a foreign corporation,)	
)	
Third-Party)	
Defendant.)	
_____)	

Submitted: February 9, 2006
Decided: February 15, 2006

Upon Defendant/Third-Party Plaintiff James A. Lawson, IV's Application
for Certification of Interlocutory Appeal.

DENIED.

ORDER DENYING LEAVE TO APPEAL FROM INTERLOCUTORY ORDER

This 15th day of February, 2006, the Defendant/Third-Party Plaintiff James A. Lawson, IV (“Lawson”) having made application pursuant to Rule 42 of the Supreme Court for an order certifying an appeal from the interlocutory order of this Court, dated January 23, 2006, granting Plaintiffs Allen R. Smith and Sarah J. Smith’s Motion for New Trial on the Issue of Damages Only (“Opinion”), it appears to the Court that:

1. An interlocutory appeal will be certified by the trial court only where the order satisfies certain threshold requirements. First, the order of the trial court must determine a substantial issue and establish a legal right.

Additionally, the order must meet at least one of the following criteria:

- (i) **Same as certified question.** Any of the criteria applicable to proceedings for certification of questions of law set forth in Rule 41; or
- (ii) **Controverted jurisdiction.** The interlocutory order has sustained the controverted jurisdiction of the trial court; or
- (iii) **Substantial issue.** An order of the trial court has reversed or set aside a prior decision of the court, a jury, or an administrative agency from which an appeal was taken to the trial court which had determined a substantial issue and established a legal right, and a review of the interlocutory order may terminate the litigation, substantially reduce further litigation, or otherwise serve considerations of justice; or
- (iv) **Prior judgment opened.** The interlocutory order has vacated or opened a judgment of the trial court; or
- (v) **Case dispositive issue.** A review of the interlocutory order may terminate the litigation or may otherwise serve

considerations of justice.¹

The criteria in subsection (i) above is meant to be read in conjunction with Rule 41(b), which lists the following reasons for accepting certification of questions of law:

(i) **Original question of law.** The question of law is of first instance in this State;

(ii) **Conflicting decision.** The decisions of trial courts are conflicting upon the question of law.

(iii) **Unsettled question.** The question of law relates to the constitutionality, construction or application of a statute of this State which has not been, but should be, settled by the Court.²

2. Defendant Lawson contends that this Court's Opinion, dated January 23, 2006, determined a substantial issue and established a legal right "in that Defendant Lawson's constitutional right to verdict by a jury of his peers has been abrogated due to [the jury's] failure to comprehend the jury instructions and render a verdict that is consistent with the law."³ Lawson argues that although neither the jury instructions nor the verdict form were invalid, the jury's answers to the verdict form were inconsistent with Delaware law regarding proximate cause and superseding cause and as "it reflects a gross misapprehension of the law, this jury's verdict should not be allowed to

¹ Supr. Ct. R. 42(b).

² Supr. Ct. R. 41(b).

³ Def. Lawson's Mot. for Cert. of Interlocutory App., ¶ 3.

stand.”⁴ Regarding the additional criteria in Rule 42(b), Defendant’s sole allegation is that the Court’s Opinion meets the requirements of subsection (iii) because “review by the Supreme Court will serve considerations of justice and may hasten the end of this litigation.”⁵

3. In response, plaintiffs do not argue that the Opinion did not determine a substantial issue or establish a legal right, thus, the first two requirements for certification of an interlocutory appeal are met. Plaintiffs do, however, argue that the criteria in Rule 42(b)(iii) relied upon by Lawson, that review of this Court’s opinion by the Supreme Court would serve considerations of justice and hasten the end of litigation, is not satisfied because a new trial on all of the issues, as requested by Lawson, “certainly would not terminate the litigation or substantially reduce further litigation. On the contrary, it would probably create further litigation.”⁶

4. The issues in the case at bar are similar to the issues presented in the Delaware Supreme Court case of *Celotex Corp. v. Bradley*.⁷ In *Celotex*, just

⁴ *Id.* at ¶¶ 6, 9, 11.

⁵ *Id.* at ¶ 4.

⁶ Pls.’ Resp. ¶ 5.

⁷ 1990 WL 168269, *1 (Del. Supr.) (refusing to accept Celotex’s application for an interlocutory appeal of the Superior Court’s order granting a partial new trial on the issue of damages only).

as here, the Superior Court, upon motion for a new trial, issued an order granting a new trial on the issue of damages only.⁸ There, the Superior Court, just as here, upheld the jury's findings, except as to damages, as sufficiently supported by the evidence.⁹ Such a holding by the trial court in *Celotex*, just as here, necessitated a new trial on the issue of damages only.¹⁰ Thereafter, upon *Celotex*'s subsequent petition for an interlocutory appeal, the Delaware Supreme Court held that such an appeal "will not be accepted generally unless review of the interlocutory order may terminate the litigation, substantially reduce further litigation, or otherwise serve considerations of justice."¹¹ Thus, an appeal from an interlocutory order granting a new trial as to damages only, where other findings by the jury, such as liability, were upheld by the trial court, should not be certified where it will not end the litigation or otherwise serve considerations of justice.

⁸ *Id.*; *Smith v. Tyndall, et al.*, Del. Super., C.A. No. 01C-12-105, Cooch, R.J. (Jan. 23, 2006) (Letter Op.), at 7.

⁹ *Id.*; *Smith*, at 10, 12-13 (holding that although the jury's verdict as to Tyndall's liability and Lawson's liability was sufficiently supported by the evidence at trial, the jury's verdict on damages was inadequate in light of the uncontroverted special damages proven by Plaintiffs).

¹⁰ *Id.*; *Smith*, at 13-15 (holding that the issue of damages was sufficiently separate from the issue of liability as to warrant a new trial on the issue of damages alone).

¹¹ *Celotex*, at *1 (finding that review by the Supreme Court of the interlocutory order granting a new trial on the issue of damages only would not terminate the litigation or otherwise serve considerations of justice) (citation omitted). Interestingly, in *Bradley*, at the time of the Supreme Court's refusal to accept the interlocutory appeal, the trial court had yet to issue a ruling on the application for certification of the interlocutory appeal. *Id.*

5. In its January 23, 2006, Opinion, this Court found that the jury's findings regarding the negligence of Linda Tyndall ("Tyndall") and Lawson's negligence were "consistent with the evidence that suggests that Tyndall's negligence had ended as soon as Allen Smith succeeded in stopping Tyndall's vehicle."¹² Also, under the unique facts of this case, the jury's findings reflect their comprehension of the law of proximate cause and superseding cause.

6. Most importantly, however, certification by this Court of an interlocutory appeal from this Court's Opinion for review by the Delaware Supreme Court will not "terminate the litigation, substantially reduce further litigation, or otherwise serve considerations of justice." As Plaintiffs say, "assuming arguendo that the defendant has met its burden under Rule 42, the best it could hope for would be a new trial on all the issues."¹³ In fact, certification may increase the issues to be heard at the next trial from damages only to both damages and liability. Further, considerations of justice will not be served if this Court hears issues that were effectively determined by the jury in the first trial. Because appellate review of this Court's interlocutory order will not result in the termination of litigation, the

¹² *Smith*, at 8.

¹³ Pls.' Opp. ¶ 5.

reduction of future litigation or otherwise serve considerations of justice, the requirement under Rule 42(b)(iii) is not met and certification is not appropriate.

7. Moreover, this Court's Opinion did not technically reverse or set aside that part of the jury's verdict upon which Lawson bases his appeal: the jury's determination of Tyndall's and Lawson's respective liability. The Court only set aside the jury's verdict as to the damages issue. Thus, under the plain language of Rule 42(b)(iii), no interlocutory appeal may be certified from an order of this Court that did not set aside or reverse the jury's verdict.

8. As Lawson does not contend that this Court's Opinion satisfies any of the other requirements of Rule 42(b), it is unnecessary to discuss them.

9. In light of the foregoing reasons, Defendant/Third-Party Plaintiff Lawson's Motion for Certification of Interlocutory Appeal is **DENIED**.

IT IS SO ORDERED.

oc: Prothonotary
cc: Edward C. Cicone, Esquire
Antonia S. Bevis, Esquire
Curtis P. Bounds, Esquire (Receiver for David S. Shamers, Esquire)
Michael A. Pedicone, Esquire